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February 24, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

RE: International Settlements Policy Reform (IB Docket No. 02-324)
International Settlement Rates (IB Docket No. 96-261)

Dear Ms. Dortch,

On Monday, February 23, 2004, I shared the attached information via electronic mail with Paul Margie of Commissioner Copps' office regarding the application of benchmarks to mobile termination rates.

One electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Attachment
copy to:
S. Feder
J. Manner
P. Margie
B. Ohlson
S. Wilkerson

The Commission's settlement rate benchmarks, like other Commission international policies, apply to the settlement rates that U.S. carriers pay to terminate U.S. international switched traffic on both fixed and mobile networks in foreign countries. This is clear from the following precedent.

The *Benchmarks Order* requires U.S. carriers to negotiate benchmark settlement rates for all types of international switched telephone calls (also referred to as "international message telephone service" ("IMTS")), irrespective of whether those calls terminate on fixed or mobile networks in foreign countries. The *Benchmarks Order* describes this requirement very broadly: "benchmarks . . . govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate *international traffic originating in the United States.*" *International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 1 (1997) ("*Benchmarks Order*") (emphasis added). *See also, id.*, ¶ 312 ("the rules we adopt here apply to the settlement rates that carriers subject to our jurisdiction must pay for *termination of U.S.-originated traffic*") (emphasis added).

The Commission used similar broad language in reaffirming the *Benchmarks Order*. *International Settlement Rates*, 14 FCC Rcd. 9256, ¶ 2 (1999) ("we affirm the Commission's previous finding that it possesses authority to regulate international settlement payments by U.S. carriers *for the termination of traffic originating in the United States*") (emphasis added). In upholding the *Benchmarks Order*, the D.C. Circuit also described the scope of the order very broadly. *Cable & Wireless P.L.C. v. FCC*, 166 F.2d 1224, 1226 (1999) ("In order to strengthen the bargaining position of domestic telephone companies in negotiations with their foreign counterparts over *the price of completing international long-distance calls*, the Federal Communications Commission issued an Order prohibiting U.S. companies from paying more than certain benchmark rates for *such 'termination' services*") (emphasis added).

The Commission's subsequent enforcement orders require U.S. facilities-based carriers to pay benchmark rates for all IMTS calls to Qatar, Kuwait and Cyprus, including calls terminating on mobile networks. *Petition for Enforcement of International Settlements Benchmark Rates for Service with Qatar*, 16 FCC Rcd. 6203, ¶ 10 (2001) (we direct all U.S. international facilities-based carriers to conduct settlements with Q-Tel for international message telephone service at a rate that does not exceed 15¢ per minute for service provided on and after January 1, 1999"; *Petition for Enforcement of International Settlements Benchmark Rates for Service with Kuwait*, 14 FCC Rcd. 8868, ¶ 9 (1999) ("we direct all U.S. international facilities-based carriers to conduct settlements with MOC for international message telephone service at a rate that does not exceed 15c per minute for service provided as of January 1, 1999."); *Petition for Enforcement of International Settlements Benchmark Rates for Service with Cyprus*, 14 FCC Rcd. 8874, ¶ 14 (1999) (similarly requiring settlements at the 15 cent benchmark rate "for international message telephone service"). Nothing in those orders suggests that U.S. carriers are not required to pay benchmark rates for IMTS traffic terminating on mobile networks in those countries.

Indeed, the Commission has historically applied International Settlements Policy (ISP) rules to traffic terminating on foreign mobile networks. For example, because the ISP requires U.S. carriers to maintain the same nondiscriminatory settlement rates for all IMTS services, Sprint and WorldCom required a waiver of the ISP before they could agree to a different settlement rate with Embratel in Brazil for calls terminating on mobile networks. *See Waiver of the International Settlements Policy*, 15 FCC Rcd. 11447 (2000).

Similarly, FCC International Bureau Chief Regina Keeney informed British Telecom in 1998 that "your proposal to apply a mobile settlement rate of 0.09 SDR . . . may violate our accounting rate policies. Our policy is that we will approve a higher accounting rate for a particular service (or a surcharge on an existing accounting rate) only where the higher rate can be cost-justified.

Your letter does not demonstrate that 0.09 SDR represents the cost of terminating a mobile call in the U.K." Letter dated Aug. 3, 1998 from Regina M. Keeney, Chief, International Bureau, to Mr. Jerry Matttiace, Director, North America, British Telecom Global Communications.

Consistent with these longstanding Commission policies, the International Bureau's March 2003 order suspending U.S. carrier payments to six Philippines carriers for engaging in anticompetitive "whipsawing" in violation of the International Settlements Policy applied to "all termination payments . . . for switched voice service," including payments for switched voice traffic terminating on mobile networks in the Philippines. *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, IB Docket No. 03-38, Order, rel. Mar. 10, 2003, ¶ 26. One of the six Philippine carriers named in that order, Smart Communications, Inc., is a mobile operator. The Bureau found that the Philippine carriers disrupted U.S. carrier networks "for the purpose of forcing AT&T and WorldCom to agree to higher termination rates," including "an increased rate of $0.16 for termination on mobile networks in the Philippines." *Id.*, ¶¶ 1, 3.